



# CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: PROPERTY LEASE FOR BOYS AND GIRLS CLUB AT BLAKELY PARK

MEETING DATE: DECEMBER 15, 1993

PREPARED BY: BOB McNATT, CITY ATTORNEY

RECOMMENDED ACTION: Council consideration of authorizing the execution of a Lease between the City and the Boys and Girls Club for facilities at Blakely Park, and making related findings.

BACKGROUND INFORMATION: As the City Council is aware, groundbreaking for the Girls and Boys Club Facility at Blakely Park occurred December 2, 1993. Plans are now progressing to move forward with the balance of the project although up to this point, we have been working on a "handshake" basis. However, before further work occurs, the formal agreement between the parties should be finalized. For that purpose, the attached lease has been drafted.

This document is the result of meetings and negotiations between the City and the Boys and Girls Club, and covers a number of concerns. Its term is fifty-five years, because that is the maximum period allowed under Government Code §37380 for lease of public property, unless certain conditions which are not applicable here are met. Annual rents are fixed at \$1.00 per year since the arrangement benefits both the City and the Club.

The lease also provides for certain reciprocal use by the City and Club of each others facility when feasible, and designates maintenance responsibilities. Other provisions are similar to those normally found in long term leases of this type.

It is also noted pursuant to paragraph 6 of the lease that upon expiration or termination, the facility will belong to the City. The Club has concurred with this arrangement. This is consistent with private sector practices, and avoids the complications associated with trying to establish separate ownership in perpetuity between land and buildings. As an assurance to the Club (or its successor in fifty-five years) the lease obligates the City to then negotiate in good faith the Club's continued use of the building for the purposes stated.

APPROVED \_\_\_\_\_

THOMAS A PETERSON  
City Manager



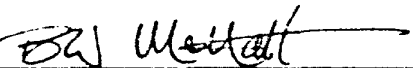
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The Parks and Recreation and Public Works Departments have concurred in recommending to the Council that if it approves the lease, a finding be concurrently made that the project is a "City project" under Municipal Code §15 64.110(A) and thus exempt from development impact mitigation fees and sewer connection fees. This is premised on the fact that the City presently owns the land and upon expiration or termination of the lease will also own the building.

The remainder of the lease addresses concerns such as hold harmless, insurance requirements etc. Council direction/approval is requested.

FUNDING: None required

Respectfully submitted,

  
\_\_\_\_\_  
Bob McNatt  
City Attorney

BM:pn

COCOMB&G/TXTA.01V

OUND LEASE

(BOYS AND GIRLS CLUB OF LODI)

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THIS LEASE AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1993, by and between the CITY OF LODI, a municipal corporation ("City"), and the Boys and Girls Club of Lodi ("Club") shall be as follows:

WHEREAS, the premises demised hereunder are presently the subject of an "Option to Lease" between the parties dated March 2, 1988 and expiring December 31, 1995; and

WHEREAS, the purpose of this agreement is to allow the construction and operation of a recreational facility by Club on land owned by the City; and

WHEREAS, the proposed relationship and arrangement described herein are in the best interests of the City, Club and the young people of Lodi by combining the efforts of both local government and the private sector; and

WHEREAS, Club's construction of this facility on City land will provide long term tangible benefits to the youth of Lodi by assuring them of a place to learn, grow, and enjoy an organized recreation program;

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

1. DEMISED PREMISES.

The premises demised hereunder shall constitute approximately twenty-nine thousand (29,000) square feet (more or less) located in the southeast corner of City property commonly known as Blakely Park, more particularly described in the diagram attached hereto and incorporated by reference as if fully set forth.

2. USES ALLOWED.

Club agrees that it will use the Community Center constructed under the provisions of this Lease for the youth of Lodi, to conduct day care programs, and events of general interest to the community at large.

3. TERM.

The term of this agreement shall be for a period of fifty five (55) years commencing \_\_\_\_\_ and ending \_\_\_\_\_ provisions of Government Code Section 37380.

4. RENT.

Rent for the demised premises shall be one dollar (\$1.00) per year for the entire term of this lease, payable in advance the first day of January of each year.

5. RELOCATION OF EXISTING FACILITIES.

Club agrees to carry out or reimburse the City for carrying out the relocation of any existing improvements, facilities, landscaping, etc. presently in Blakely Park which may be made necessary by the construction of the premises described above.

A landscape plan (Exhibit "B") is attached hereto and shall be deemed a condition of this Lease. Club further agrees to replace any trees necessarily removed during the remodeling or construction of the clubhouse.

6. OWNERSHIP OF IMPROVEMENTS UPON TERMINATION OR EXPIRATION OF LEASE.

It is agreed between the parties that upon the expiration or termination of this Lease, the parties shall in good faith attempt to renegotiate an agreement to continue similar uses to those specified in Paragraph 2 above. If mutual agreement is not possible, following a reasonable attempt to reach agreement, the City agrees it shall endeavor to use the building for purposes similar to its original purpose. However, upon surrender, termination or expiration of this Lease, ownership of the building and all improvements shall vest in the City.

7. USE OF FACILITIES BY CITY.

The first priority for all uses of the facility built on the demised premises shall be for the operation of the Club's own programs; the City may use the facility at such reasonable times when no other activities are scheduled by Club, and City shall pay to Club a fee intended to be minimal, and covering only necessary costs of operation and maintenance as determined by Club. The parties shall negotiate a reciprocal use agreement for charges and costs for use of each other's recreational facilities on the basis of such minimal cost of operation and maintenance.

8. ABANDONMENT/CESSATION OF USE BY CLUB.

Prior to commencement of construction (Phase 1), Club shall provide proof to City's satisfaction that it presently has finances to complete the building shell, which shall be completed within twelve (12) months following groundbreaking, now scheduled for December 2, 1993. Thereafter, (Phase 2), the interior finish and equipping of the facility shall be completed within twenty-four (24) months after groundbreaking.

Failure of Club to complete construction within these time limits shall be deemed a material breach of this Lease.

Following the initial twenty-four (24) month construction period, any cessation of use by Club for a continuous period of three hundred-sixty (360) days or more shall allow City, within its discretion, to operate the facility. The parties hereto may mutually agree at any time that the City may assume operation of the facilities.

In the event of the City's declaration of abandonment or cessation of use, Club can cure such default and resume operations by demonstrating that it has on hand the projected operating cost for a twelve (12) month period. In the event of cessation or abandonment of operations under this Lease for a period of twenty-four (24) months, the City may deem the Lease null and void within its sole discretion.

9. MAINTENANCE OF FACILITIES.

Club shall be responsible for all utilities and the interior and exterior maintenance of the building erected hereunder. City shall be responsible for the maintenance and upkeep of the balance of Blakely Park exclusive of landscaping installed by Club in conjunction with construction of the building, interior walkways, parking lot and Club playground. After notice by City to Club and a reasonable response time, City shall have the right to enter onto the premises for the purpose of performing any necessary maintenance for the preservation of the health or safety of Park users or the public, should Club fail or refuse to do so. Club agrees that it shall make all reasonable efforts to keep the facility free of graffiti.

10. INSURANCE.

Lestee is required to carry a policy of Comprehensive General Liability insurance in compliance with all of the provisions of the "Risk Transfer Requirements For Lease or Use of City of Lodi Facilities (4/93 (KE)," attached hereto as Exhibit "A" and incorporated herein by reference.

Failure to maintain the insurance called for in this paragraph shall be deemed a material breach of this Lease.

11. HOLD HARMLESS.

City and Club hereby agree to save, defend and hold harmless the other for any suit or cause of action arising exclusively from the negligence or alleged negligence of the indemnifying party, its agents, officers and employees, including reasonable attorneys' fees.

12. TERMINATION/SURRENDER.

Lessee may at any time after completion of construction under this Lease terminate or surrender such Lease with the written consent of City upon six (6) months' written advance notice. Otherwise, Lessee shall not vacate, abandon, terminate nor surrender the premises at any time during the term hereof and if Lessee shall abandon or vacate the premises, or be dispossessed by process of law or otherwise all personal property belonging to Lessee left upon the premises shall be deemed abandoned at the option of City.



13. NO ENCUMBRANCE BY LESSEE OF REAL PROPERTY.

Lessee shall in no way encumber, mortgage or hypothecate nor pledge as security for any debt all or any portion of the premises demised hereunder nor improvements thereon except with the written consent of City.

14. DESTRUCTION OF PREMISES.

In the event of a partial destruction of the premises during the term of this Lease, from any cause whatsoever, Club shall forthwith repair all damages at its own expense, commencing within sixty (60) days from the date of loss or destruction. In the event that Club does not within sixty (60) days from the date of loss or destruction commence repairs or reconstruction, City may, in writing, deliver to Club a demand that within thirty (30) days of such notice, Club either commence reconstruction or abandon this Lease. In the event Club opts to abandon the Lease, all improvements remaining thereon shall become property of City. This shall in no way be deemed a waiver of any other legal right by either party hereto.

15. NOTICES.

All notices required under this Lease shall be given in writing, by first-class mail with postage prepaid to the following addresses:

City shall be: City Manager

P. O Box 3006

Lodi, CA 95241-1910

Club shall be: Boys' & Girls' Club of Lodi

P. O. Box 244

Lodi, CA 95241

16. ASSIGNMENT OR SUBLETTING.

Club shall not assign this Lease or sublet any portion of the premises erected hereunder without the prior written consent of City, which shall not be unreasonably withheld. Any assignment or subletting without the consent of City shall be void and, at the option of the City, may terminate this Lease.

17. APPROVAL OF CONSTRUCTION PLANS BY CITY PRIOR TO CONSTRUCTION OR REMODEL.

Club shall, prior to the commencement of construction, reconstruction, or substantial remodeling of the premises, submit such plans in advance to the City for approval.

18. ENTIRE AGREEMENT.

This lease constitutes the entire understanding and agreement between the parties hereto. There shall be no modifications without the written consent of both parties. The titles contained in the Lease are provided for convenience only and are not controlling in any interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and  
year first hereinabove mentioned.

CITY OF LODI,

a municipal corporation

BOYS AND GIRLS CLUB OF LODI

By \_\_\_\_\_

THOMAS A. PETERSON

City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JENNIFER M. PERRIN

City Clerk

\_\_\_\_\_  
BOBBY W. McNATT

City Attorney